

Appeal No.: 3282 003 2019  
Hearing Commenced: March 13, 2019

RED DEER APPEAL & REVIEW BOARD DECISION

CHAIR: Karen Howley  
PANEL MEMBER: Michael Kartusch  
PANEL MEMBER: Tyler Lacoste

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BETWEEN:

ZEMENU MARU

Appellant

and

THE CITY OF RED DEER  
Represented by Michelle Baer, City Solicitor  
Amy Fengstad, Parking & Licensing Supervisor

City Authority

**DECISION:**

The application by the Appellant for a 2019 Taxi Driver License is approved. The reasons are described below.

**BACKGROUND**

1. The Red Deer Appeal & Review Board (the Board) is established by The City of Red Deer, By-law No. 3487/2012, *Appeal Boards Bylaw* (October 29, 2012). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under any City bylaw and in particular, arising from The City of Red Deer, Bylaw No. 3282/2001, *Taxi Business Bylaw* (June 18, 2001) (Taxi Bylaw).
2. On March 1, 2019 the City Authority issued a letter denying the Appellant's (Zemenu Maru) Taxi Driver License renewal pursuant to s. 49 of the Taxi Bylaw. Specifically, the letter states:

As per The City of Red Deer Taxi Business Bylaw 3282/2001:

"49 The License Inspector is hereby authorized to:

f) revoke or suspend a taxi driver's license:

ii) where the character, conduct or state of health of the taxi driver becomes such that he is, in the opinion of the License Inspector, unfit to drive a public conveyance;

Your current taxi badge is to be surrendered to our office at 3<sup>rd</sup> floor city hall, 4914 48 Av, **immediately.**

You may appeal this decision per the Taxi Business Bylaw:

"55 Any decision of the License Inspector under section 50 of this bylaw may be appealed to the Red Deer Appeal & Review Board by the broker, licensee, or driver in accordance with the relevant procedures as outlined in The City of Red Deer Committees Bylaw."

An appeal of the denial was filed by the Appellant with the Board March 1, 2019.

3. The Chair confirmed that no Board Member raised any conflicts of interest with regard to the matters before them.
4. Neither party raised any objection to the panel hearing the appeal.
5. The Board considered two preliminary issues: it's authority to hear the appeal; and public attendance and access to documents.

***Board Authority to Hear the Appeal***

6. The Board identified a discrepancy in the Taxi Bylaw and the letter of refusal issued by the City Authority. In s. 55, the Taxi Bylaw grants a right of appeal to decisions made under s. 50; however, the refusal letter states that the license was refused under s. 49 of the Taxi Bylaw.
7. The City Authority stated that they believe the discrepancy is a typographical or administrative error.
8. The Appellant agreed with the City Authority with respect to the Board's authority to hear the appeal.
9. The Board reviewed s. 49 of the Taxi Bylaw, which lists the powers of the License Inspector, while s. 50 of the Taxi Bylaw relates to the suspension of a license and reads:

50	A suspension of any license by the License Inspector may be:
	a) for a period of time not exceeding the unexpired term of the license; or
	b) where the suspension is for non-compliance with this bylaw, until the requirements of the bylaw, in the opinion of the License Inspector have been met.
	33 Bylaw No. 3282/2001

10. The Board believes the discrepancy is administrative or typographical in nature.
11. Given that the Board believes that the discrepancy is an administrative oversight or typographical error, the Board has determined that it would be a miscarriage of administrative fairness to, essentially, refuse the Appellant a hearing and decision.

***Public Hearing & Record***

12. The Board entered the following documents into evidence:
  - A1 – Hearing Materials (7 pages)
  - B1 – City Authority: Report (exhibits A–H)
  - C1– Appellant: Submission (5 pages)
13. The Board advised the Parties that the hearing is open to the public, and that documents entered into evidence become a public record unless a Party requests that the hearing be closed or a written document sealed.
14. The Appellant requested that the proceedings be closed to the public and that the entire record be sealed from the public record.

15. The City Authority did not object to having the record sealed. However requested that the Licensing & Inspections Manager Erin Stuart be allowed to stay for the proceedings as she may be asked to provide information.
16. The Chair asked the Appellant if he had any objections to the individuals currently in the room. He confirmed that he had no issues with this request.
17. The Board is a public body to which the open court principle applies. Public and media access is urged. This encourages fair and transparent decision making and is essential to public confidence. However, in the interest of encouraging a full and open dialogue, the Board agreed to close the proceedings to the public with the exception of the individuals that were already in the room.
18. The Board also agreed to seal the Exhibits from the public record. Public disclosure of them should be limited to law enforcement or authorized agencies only.
19. There were no further preliminary matters.

***Position of the City Authority***

20. The City Authority stated that the main reasons for revoking the taxi driver license are:  
i) safety of the travelling public; ii) character and conduct of the Appellant.
21. With regard to the safety of the travelling public, the City Authority stated that the primary purpose of taxi regulations is to protect the public. In order to ensure this is accomplished, the City exercises some control over people entering the industry as owners and drivers by suspending or revoking the licenses of people who demonstrate that they are not of good character, or for other reasons cannot be relied upon to carry passengers safely.
22. The City Authority referred the Taxi Bylaw which requires an Applicant of a license to provide a list of all convictions for any offences under the laws of Canada. The City Authority advised that in November of 2017, a letter was sent to all taxi brokerages reminding them of the application requirements.

23. The City Authority stated there is no record of the results from a 2017 Vulnerable Sector Check on file for the Applicant. The renewal application for submitted December 27, 2018 only provided a letter of employment from his Broker and a copy of this Driver's abstract.
24. The City Authority further stated that the Appellant had to be reminded that in order to maintain the taxi licence he is required to provide the results of a Vulnerable Sector Check or at minimum provide proof of the request.
25. February 27, 2019 the Appellant provided the results to the City Authority which indicated that the Appellant had been charged under section 266, 267 (a), and 264 (1)(1)(a) under the *Criminal Code of Canada* in 2016. As well as section 271(1)(a) in 2003 under the *Criminal Code of Canada*, all charges were withdrawn.
26. The City Authority referred to the Department Policy (the Policy) that is intended to guide how the Licence Inspector would evaluate fitness to drive when a Criminal Record Check disclosed concerns.
27. Due to the serious nature of the offences the Licence Inspector is required to look at paragraph 12 of the Policy where it states the Licensing Authority shall not authorize or maintain the authorization of any person as a vehicle for hire drive if the person is charged with or convicted of an offence under the Criminal Code of Canada.
28. The City Authority stated the Licencing Inspector had no evidence to evaluate the charges and noted that the Policy does not specifically speak to withdrawn or dismissed charges because the Policy does not allow for any interview. The City Authority noted a discrepancy in the wording of the Policy, under paragraph 12 where there is a reference to 'charges' should more appropriately read 'pending charges'.
29. The City Authority emphasized that there were two different sets of charges and that they were both violent in nature. If the charges had been convictions they would be arguing for the Board to uphold the City Authority's decision, since there were no convictions and the charges have been either withdrawn or dismissed they leave it to the Board to make a determination.

***Position of the Appellant***

30. The Appellant stated that he has driven taxi in the City of Red Deer for a number of years problem free with no complaints, and that he is not a threat to the public. In support of this he provided a letter of support from his employer indicating that the Appellant is the driver/owner of a handi-van and interacts daily with many handicapped individuals.
31. The Appellant stated that he supports a number of family members, originally employed as a welder by trade but was off work for two years requiring knee surgery. In order to support his family the Appellant purchased his own specialty vehicle (handi-van) for the purpose of becoming a taxi driver and stated this is his only source of income.
32. The Appellant explained to the Board that he submitted the 2017 Vulnerable Sector Check to the City Authority after his original application was submitted because it arrived later. (exhibit C.1)
33. The Appellant further explained that he had three charges in 2016 related to one domestic altercation where the charges were dismissed in Provincial Court May 02, 2017. The charge from 2003 was related to a different domestic altercation, the charges were withdrawn right away.
34. The Appellant acknowledged the charges but stated they were withdrawn, and that he believes that is wrong to deny a license in these circumstances as anybody can raise accusations with no merit.

***Board Analysis***

35. The City Authority stated that the 2017 Vulnerable Sector Check was not submitted to the City; however the Appellant stated that it was submitted, just not with the original application as it arrived at a later date.
36. The Board places little weight on whether or not the 2017 Vulnerable Sector Check was submitted to the City in light of the contradictory submission by the Appellant, there is insufficient information for the Board to make a determination.

37. The City Authority stated that the purpose of the Taxi Bylaw is to protect the public. In relation to this the City adopted a Department Policy to guide the Licence Inspector's assessment where a Criminal Record Check discloses concerns.
38. The Board viewed the results of the 2017 Vulnerable Sector Check against the 2018 results. The Board notes the 2017 charges were dismissed in Provincial Court and the 2018 results indicated all charges were withdrawn. (see exhibit C.1)
39. The Board examined the differences between charges, pending charges and convictions. Charges and pending charges are essentially the same in that they do not indicate a decision, therefore the matter is unresolved. Withdrawn and or dismissed charges indicate a decision; where the matter is resolved in the perspective of the courts and law enforcement.
40. Although it is not up to the Board to re-evaluate the decision of law enforcement or the courts to withdraw/dismiss the charges, the Board can take it into account when determining the character and conduct of the Appellant.
41. The Board believes the fact that all the charges were either withdrawn or dismissed is significant. The statement of the Appellant corroborates the decision of the courts to dismiss the 2016 charges and the withdrawal of the 2003 charges.
42. Section 49 of the bylaw allows the Board to assess the character of the Appellant, and they have done so in accordance with paragraph 9 of the Policy. Upon review of this paragraph the Board believes the Policy refers to convictions or charges awaiting trial, however this does not apply in this particular case.
43. The Board notes the statement from the City Authority indicating there may have been a discrepancy in the Policy, under paragraph 12 where 'charges' should more appropriately read 'pending charges'. The Board believes the intentions of paragraph 12 were to include 'pending charges' that were not resolved.

- 12 The licensing authority shall not authorize or maintain the authorization of any person as a vehicle for hire driver if the person is charged with or convicted of an offence under the *Criminal Code (Canada)* or the *Controlled Drugs and Substances Act (Canada)* that is related to the functions, duties or business of a vehicle for hire company or a vehicle for hire driver, including, without limitations:
- (1) Any offence of a violent nature, including firearms and weapons offences,
  - (2) Any offence involving sexual assault, sexual exploitations, sexual interference, procuring or invitation to sexual touching,
  - (3) Trafficking,
  - (4) Any offence involving fraud or fraudulent transactions, conspiracy to defraud, the use of false pretences, bribery, extortion or theft, or
  - (5) Any offence relating to the unlawful operation of a motor vehicle.
44. Based on the analysis above, the Board believes paragraph 12 of the Policy should not apply where the Appellant's charges have been dismissed or withdrawn, therefore renders the assessment under paragraph 9 unnecessary.
45. However in the event that the Board is incorrect in its interpretation, the Board used the assessment criteria set out in paragraph 9 when considering the character and conduct of the Appellant as follows:
1. How relevant the offence(s) are to the licence being applied for:  
The Board believes it to be relevant, because of the nature of the offences e.g. assault, sexual assault, therefore would be considered relevant to a person working closely with the public.
  2. How serious the offences(s) were:  
The City did not contest the Appellant's description of the events, therefore the Board accepts it. The Board notes all charges were either withdrawn or dismissed.
  3. When the offence(s) were committed:  
The offences (3) from 2016 were all from one incident, since the Appellant held a taxi licence at the time the Board gave this incident consideration. Due to the age of the offence (1) from 2003, the Board placed little weight on this offence.
  4. The date of the conviction:  
The Board notes there were no convictions, the 2003 charges were withdrawn and the 2016 charges were dismissed by Provincial Court.(see exhibit C.1) The Board believes this is relevant to the weight given in #2, 3 & 8.
  5. Circumstances of the individual concerned:  
The Board heard statements from the Appellant indicating that he supports a number of family members through his employment as a taxi driver, and that this is his only



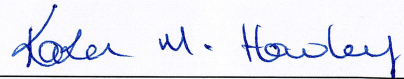
source of income. During his time as a taxi driver there have been no complaints or further charges. He also stated he provides a specialized service to disabled members of the community.

6. Sentence imposed by the court:  
The Board notes there were no sentences, the 2003 charges were withdrawn and the 2016 charges were dismissed by Provincial Court.(see exhibit C.1)
  7. The Applicant's age at the time of the conviction:  
The Board was unsure how this would be relevant and notes there was no conviction. Therefore the Board gives it no weight.
  8. Whether they form part of a pattern of offending:  
The Board notes that two incidents may indicate a pattern, but based on the oral submission from the Appellant the Board believes the events were factually different. Therefore the Board is not persuaded that these incidents constitute a pattern.
  9. Any other character check considered reasonable (e.g. personal references):  
The Appellant provided a letter from employer as a positive affirmation of character where he was described as a 'special individual' choosing to provide service to the disabled members of the community. The Board believes this speaks to the Appellant's good character.
  10. Any other factors that might be relevant:  
The City did not take a firm position after hearing the Appellant's testimony. The Board believes this is relevant.
46. Based on the above, the Board finds that the Appellants character and conduct is such that he is fit to drive a public conveyance of people with a taxi.

**CLOSING:**

47. For the reasons detailed above, the decision of the City Authority is revoked and the application for a 2019 Taxi Driver License is approved.

Dated at the City of Red Deer, in the Province of Alberta this 26 day of March, 2019 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.



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K. Howley, Chair  
Red Deer Appeal & Review Board